Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-187
Implementation of Section 402(b)(1)(A)	)	
of the Telecommunications Act of 1996	)	

AMERITECH COMMENTS

The Ameritech Operating Companies (Ameritech) respectfully submit these comments on petitions for reconsideration of the Report and Order in the above-captioned proceeding. As discussed more fully below, Ameritech generally supports SWBT's request that the Commission reconsider its decision to require that tariff review plans (TRPs) be filed by local exchange carriers (LECs) 90 days in advance of their annual filing. This 90-day requirement is excessively long and at odds with one of the principal purposes of the Telecommunications Act of 1996 (the 1996 Act), which is to reduce regulatory burdens and delays. Ameritech opposes the requests of MCI and AT&T that the Commission require advance filing of price cap index (PCI) calculations associated with mid-year exogenous cost changes. Ameritech also opposes MCI's proposal that LECs be permitted to use protective orders only after receiving section 271 authorization, as well as MCI's request that the Commission authorize use of standing protective agreements. Finally, Ameritech opposes AT&T's proposed prohibition on the filing of streamlined rate decreases on Fridays.

A. The Review Period for TRPs Should be Dramatically Reduced

SWBT seeks reconsideration of the Commission's decision to require price cap LECs to file a modified version of the TRP for their annual access filing 90 days prior to July 1 of each year. SWBT argues that, even without rates, TRPs will provide early notification of the rate reductions that subsequently will be required. SWBT maintains that this is contrary to the intent of the statute. It urges the Commission to treat TRPs like any other filing for purposes of section 204(a)(3).

Ameritech agrees in substantial part with SWBT's arguments. The only justification the Commission offered in requiring that TRPs continue to be filed on 90 days' notice was the conclusory statement that "[i]n view of the volume and complexity of the information submitted in the price cap carriers' TRPs . . . any notice period less than 90 days would be inadequate to allow interested parties to review these filings carefully."[1] Ameritech respectfully submits that this justification is sorely lacking.

Ameritech does not seek reconsideration of the Commission's conclusion that, as a strict legal proposition, a TRP without rate information is not subject to section 204(a)(3), although Ameritech does not believe that the issue is as clear-cut as the Commission makes it out to be.[2] Ameritech

---

1 Report and Order at para. 102.

2 In particular, Ameritech finds problematic the notion that the Commission can bifurcate a filing between information subject to streamlining and information that is not. If that approach were extended beyond the context of TRPs, it could lead to a dismantling of section 204(a)(3). Already AT&T and MCI seek to extend the approach to mid-term filings

submits, however, that regardless of whether section 204(a)(3) applies to TRPs without rate information, a 90-day review period for a TRP is excessive and completely out of sync with the streamlined framework that Congress envisioned for LEC tariffs and with the statutory scheme as a whole. The whole tenor of the 1996 Act is to reduce, as much as possible, regulatory obstacles and delays. When one considers the timetables prescribed in the 1996 Act, not just for tariff review, but for a host of decisions that involve far greater volumes of information and information of far greater complexity than that contained in a TRP,[3] the 90-day TRP review period stands out as a complete aberration, particularly given that non-price cap LECs are permitted to file their TRPs at the same time as their annual access tariff. The 90-day period should be dramatically reduced to reflect the design of the 1996 Act.

SWBT also points out in its petition that, even without specific rate information, TRPs provide LEC competitors with significant information about the direction LEC rates are likely to ultimately take. In this respect, TRPs provide LEC competitors with valuable competitive information. Giving them 90 days advance notice of such information, when that notice is not strictly necessary, is unfair and contrary to the public interest.

In its initial comments in this proceeding, Ameritech suggested that TRPs be filed 15 days prior to the annual filing. Ameritech continues to

---

with exogenous cost changes. See below. Ameritech has no doubt that they will seek to extend this theory to other contexts as well.

[3] The most obvious example, of course, is the requirement that section 271 applications be resolved within 90 days. Other examples include, inter alia the 6-month period for adopting interconnection rules, the 60-day period for considering interim relief in connection with various types of complaints, and the 90-day period for final decisions.

believe that a 15-day filing period is sufficient to permit review of a TRP. It is also far more consistent with a streamlined tariff process than the 90-day period prescribed in the Order.

B. The Commission Should Not Require Advance Filing of PCI Calculations Associated with Mid-Year Exogenous Cost Changes

MCI and AT&T seek to pare away at section 204(a)(3) by asking the Commission to require LECs to file PCI calculations for mid-year exogenous cost changes in advance of the associated rate changes. They argue that "considerable cost data and complex calculations underlie mid-year PCI changes" and that the Commission should treat them similarly to TRPs.[4]

The Commission should reject these requests. When it enacted the 1996 Act, Congress was well aware that LECs are required to file supporting information with some of their tariff filings. Nevertheless, Congress decided to streamline the review period for all LEC tariffs. It made no exception for tariffs accompanied by cost data and other information. Requiring that such data be filed in advance of the rates -- and thereby extending to mid-term filings the approach prescribed for annual filings -- would be flatly inconsistent with section 204(a)(3). Therefore, if the Commission continues to require that TRPs be filed in advance of annual access tariffs, it should make clear that this rule applies only to TRPs and will not be extended to any other filing.

---

4 MCI Petition at 20. See also AT&T Petition at 13.

C. The Commission Should Affirm the Protective Order Provisions

MCI seeks reconsideration of the Commission's decision to allow routine use of a standard protective order in the pre-effective tariff review process whenever a carrier has made a good faith showing in support of its request for confidential treatment. MCI claims that this decision is not compelled by section 204(a)(3) and is inconsistent with pre-Act precedent and Commission rules requiring the filing of public cost support data. It argues that Bell Operating Companies (BOCs) should not be permitted to use a protective order until they have met section 271(d)(3) requirements, and that independent LECs should be subject to an "equivalent competitive test" which MCI does not purport to define.

MCI's request should be denied. MCI does not argue that the Commission's decision to allow use of a standard protective order violates any statutory requirement. Nor does it argue that the Commission's decision was procedurally defective or unexplained. Rather, its sole claim is that the Commission altered its rules without a statutory compulsion. This argument -- that the Commission lacks authority to adopt new rules and policies unless it is specifically compelled to do so by law -- is frivolous and should be summarily rejected.

In any event, the Commission's decision was sound as a matter of law and policy and should be affirmed. The Commission and the courts have recognized that cost information is quintessentially proprietary, and that unrestricted public disclosure of such information could place LECs at a

significant competitive disadvantage.[5] As the Commission noted, however, case-by-case consideration of confidentiality claims during a streamlined tariff review process would be impossible. By permitting LECs to use protective orders based on a good faith claim of confidentiality, the Commission ensures that LECs maintain some ability to protect confidential data when they avail themselves of their statutory right to streamlined tariff review. At the same time, the Commission preserves the ability of interested parties to secure prompt access to such information for purposes of evaluating and commenting on LEC tariffs. In this respect, the Commission's decision represents a fair and appropriate accommodation of conflicting interests.

MCI, nevertheless, faults the balance struck by the Commission. It contends that LECs should not be permitted any protection of any cost information until they have met section 271(d)(3) standards or some equivalent competitive test. This argument ignores that section 271(d)(3) standards relate primarily to local exchange competition, not competition in access services. These standards are thus irrelevant and ill-suited to the question of whether access costs deserve protection.[6]

---

5 See, e.g. Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 5058 (1991) at para. 13 (citations omitted): "Cost data and other information that would reveal a company's profit margins have been recognized by the courts as a category of information with considerable competitive implications. Disclosure of profit margins carries the obvious risk of enabling parties to underbid or under price their competitors. It is 'virtually axiomatic' that disclosure of detailed financial data showing costs and revenues would, in normal competitive markets, be likely to enable a competitor to gain substantial and unwarranted advantage." See also *Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527 (D.C. Cir. 1979); *Braintree Electric Light Dept. v. Department of Energy*, 494 F. Supp. 287 (D. D.C. 1980); *Timken Co. v. U.S. Customer Service*, 491 F. Supp. 6557 (D. D. C. 1980).

6 For example, Ameritech has submitted extensive data showing that it faces significant competition from competitive access providers in the provision of DS-1 and DS-3 services. The Common Carrier Bureau has relied on this data in waiving sections 0.453(j) and 0.455(b)(11) of the Commission's rules in order to protect the confidentiality of Ameritech's DS-1 and DS-3 cost data. See, e.g. Ameritech Operating Companies, Tariff FCC No. 2, Transmittal No. 1040, Order, released December 27, 1996.

D. The Commission Should Not Require LECs to Enter Into Standing Protective Agreements

MCI also asks the Commission to require LECs to enter into standing protective agreements. According to MCI, it would be burdensome to have to enter into a separate protective agreement each time a LEC files confidential information to which MCI seeks access.

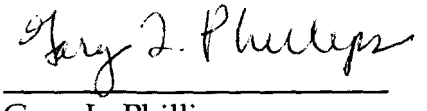
MCI's request should be rejected. While, as noted above, Ameritech supports the Commission's decision to rely on protective orders to protect confidential cost information, protective orders are not a panacea. Violations of protective orders are difficult to detect and prove. Damages can be even more difficult to establish. In order for a protective order process to work, therefore, it is essential that those with access to confidential information have a clear sense of the importance of their legal obligation to adhere to the terms of the protective order. Requiring such persons to execute a protective agreement each time confidential information is first made available to them serves to underscore this obligation. Equally important, it ensures that such persons are fully aware of the specific terms and conditions of the protective order so that they do not inadvertently violate it. Eliminating these critical safeguards through use of standing protective orders would dilute the value of protective orders and render them largely ineffectual in protecting confidential information.

E. The Commission Lacks Authority to Deny Streamlined Treatment to LEC Rate Decreases Filed on Fridays

Having failed to convince the Commission that LECs should, as a matter of course, be given only one day in which to respond to what could be several comments opposing their tariff filings, AT&T now has the temerity to complain to the Commission that if a LEC files a rate decrease on a Friday, AT&T will have only one business day in which to respond. AT&T asks the Commission to refuse to treat such filings on a streamlined basis.

The Commission must reject AT&T's request. Section 204(a)(3) provides that rate decreases "shall" be effective in 7 days. AT&T, having successfully challenged the Commission's permissive forbearance policy before enactment of the 1996 Act on the ground that "shall" means "shall,"[7] knows all too well that the Commission is without authority to deny streamlined treatment to some rate decreases. AT&T's request should be denied.

Respectfully Submitted,



Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W. Suite 1020
Washington, D.C. 20005
(202) 326-3817

April 10, 1997

7 *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *rehearing en banc denied*, January 21, 1993, *cert. denied, MCI v. AT&T*, 509 U.S. 913 (1993) (FCC tariff forbearance policy unlawful since section 203 of the Communications Act states that common carriers "shall" file tariffs).

CERTIFICATE OF SERVICE

I, Toni R. Acton, do hereby certify that a copy of the foregoing Ameritech Comments has been served on the parties listed below, by first class mail, postage prepaid, on this 10th day of April 1997.

By: _____
Toni R. Acton

Robert M. Lynch
Durward D. Dupre
Thomas A. Pajda
J. Paul Walters, Jr.
Attorneys for Southwestern Bell Telephone Company
One Bell Center
Room 3520
St. Louis, MO 63101

Mark C. Rosenblum
Peter H. Jacoby
James H. Bolin, Jr.
Attorneys for AT&T
295 North Maple Avenue
Room 3250J1
Basking Ridge, NJ 07920

Frank W. Krogh
Alan Buzacott
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006